

1 **EDMUND G. BROWN JR.,**
Attorney General of the State of California
2 **TOM GREENE,**
Chief Assistant Attorney General
3 **THEODORA BERGER,**
Senior Assistant Attorney General
4 **BRIAN HEMBACHER (State Bar No. 90428)**
OLIVIA W. KARLIN (State Bar No. 150432)
5 Deputy Attorneys General
300 S. Spring Street, Ste. 5000
6 Los Angeles, California 90013
Telephone: (213) 897-2638
7 Fax: (213) 897-2802
Brian.Hembacher@doj.ca.gov

8 Attorneys for Plaintiff

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 **THE STATE OF CALIFORNIA**
13 **DEPARTMENT OF TOXIC**
SUBSTANCES CONTROL,

14 Plaintiff,

15
16 **CORNELL-DUBILIER ELECTRONICS,**
17 **INC.; and GLENCOE PROPERTIES, LLC**

18 Defendant.

19 **AND RELATED CROSS-CLAIMS**

CIVIL ACTION NO.
CV04-9785-VBF(MANx)

CONSENT DECREE

INTRODUCTION

The Parties to this Consent Decree are THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL ("DTSC"), CORNELL-DUBILIER ELECTRONICS, INC. ("CDE") and GLENCOE PROPERTIES, LLC ("Glencoe"). The Parties enter into this Consent Decree in order to ensure the cleanup of the contaminated site located at 4144 Glencoe Avenue in the Venice area of Los Angeles, California, which will be referred to herein as "the Subject Property." DTSC filed a complaint in this matter against CDE pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq. ("CERCLA") on December 2, 2004, which was subsequently amended on January 3, 2007 (the "Complaint").

In the Complaint, DTSC asserts that CDE was an "owner and operator" of a facility at which there was a release or threatened release of hazardous substances, as those terms are defined under CERCLA, and that CDE is therefore liable for the costs that have been, or will be, incurred in response to releases and threatened releases of hazardous substances at and from the Subject Property. In the Complaint, DTSC asserts that Glencoe is an "owner and/or operator" of a facility at which there was a release or threatened release of hazardous substances, as those terms are defined under CERCLA, and that Glencoe is therefore liable for the costs that have been, or will be, incurred in response to releases and threatened releases of hazardous substances at and from the Subject Property.

This Consent Decree resolves the claims asserted in the Complaint, and requires CDE and/or Glencoe to implement response actions as specified in this Consent Decree, implement the Remedial Action Plan ("RAP") for the Subject Property (attached hereto as Exhibit "A") as specified herein, and pay certain costs that DTSC will incur with respect to the Facility as specified herein. In addition, some aspects of the response actions either will affect or will be

1 affected by conditions on two properties adjacent to the Subject Property -
2 specifically, (a) a parcel located immediately north and east of the Subject
3 Property at 4150 Glencoe Avenue, owned by Bradmore Investments LLC
4 ("Bradmore"), and, (b) a parcel located immediately south of the Subject
5 Property with three existing buildings identified with addresses of 4204, 4206,
6 4208, 4212, 4214, 4216, 4218, 4220, 4222, 4224, 4226 and 4228 Glencoe
7 Avenue (collectively, "42xx Glencoe Avenue"), owned by Parr-Bohn Properties
8 Ltd. II ("Parr-Bohn"). As of the Effective Date, the 4150 Glencoe and 42xx
9 Glencoe Avenue properties are in common management with Glencoe. The
10 Parties agree that this Consent Decree will facilitate remediation of the Subject
11 Property and potential future use and/or redevelopment of both the Subject
12 Property and these two adjacent properties.

13 This Consent Decree is entered into by DTSC pursuant to its authority
14 under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613. DTSC,
15 CDE, and Glencoe agree, and this Court finds by entering this Consent Decree,
16 that this Consent Decree has been negotiated in good faith and is entered into
17 without the admission of any issue of fact or law, that settlement of this matter
18 will avoid expensive and protracted litigation between the Parties, and that this
19 Consent Decree is fair, reasonable and consistent with the National Contingency
20 Plan, is in the public interest, and will benefit the environment and the
21 community.

22 **NOW THEREFORE, it is ORDERED, ADJUDGED, AND**
23 **DECREED, as follows:**

24 **1. JURISDICTION**

25 The Court has jurisdiction over the subject matter of this action
26 pursuant to 28 U.S.C. § 1331 and CERCLA, 42 U.S.C. § 9601 *et seq.* Only for
27 the purposes of this Consent Decree and the underlying Complaint, CDE and
28

1 Glencoe agree to submit to the jurisdiction of this Court and to venue in this
2 District.

3 **2. PARTIES BOUND**

4 2.1. The "Parties" to this Consent Decree are DTSC, CDE and
5 Glencoe.

6 2.2. CDE and Glencoe agree to undertake certain obligations with
7 regard to the Remedial Action Plan for the Facility as set forth in this Decree.

8 2.3. This Consent Decree applies to and is binding upon DTSC,
9 and upon CDE and Glencoe and their respective officers, directors, successors,
10 heirs, and assigns. Any change in ownership, partnership status or corporate
11 status of CDE or Glencoe, including, but not limited to, any transfer of assets or
12 real or personal property, shall in no way alter CDE's or Glencoe's rights or
13 responsibilities under this Consent Decree. Except as provided for herein, CDE
14 and Glencoe shall each be responsible and shall remain responsible for carrying
15 out all activities required of each of them under this Consent Decree.

16 2.4. All actions taken by DTSC pursuant to this Consent Decree,
17 including all approvals, reservations of rights, and covenants not to sue are
18 solely those of DTSC and of no other agencies. Notwithstanding such
19 limitation, on May 25, 2006, the California Environmental Protection Agency
20 designated the DTSC as the Administering Agency for the Subject Property
21 pursuant to Health and Safety Code section 25262(c); accordingly, the DTSC is
22 responsible for administering all state and local laws that govern the Facility
23 cleanup, determining the adequacy and extent of the cleanup, issuance of
24 necessary authorizations and permits, and following the determination that an
25 approved remedy has been accomplished, issuance of a certificate of
26 completion.

1 2.5. CDE and Glencoe shall each be responsible for ensuring that
2 its contractors and subcontractors perform the Work for which each is
3 responsible herein in accordance with this Consent Decree.

4 2.6 Neither CDE nor Glencoe admit any fact or liability arising
5 out of or relating to the transactions or occurrences alleged in the complaint, nor
6 do they acknowledge that any release or threatened release of hazardous
7 substances at or from the Subject Property constitutes an imminent or substantial
8 endangerment to the public health or welfare or the environment.

9 **3. BACKGROUND**

10 **3.1. The Subject Property.**

11 The Subject Property (also known as the "4144 Glencoe Avenue
12 Site" or the "Site") is located at 4144 Glencoe Avenue in the Venice area of Los
13 Angeles, California and is currently owned by Glencoe. The Subject Property is
14 approximately 3.4 miles from Santa Monica Bay, 0.75 miles from Marina Del
15 Rey Harbor, 1.9 miles from Ballona Creek and 2.8 miles northeast of the
16 Ballona Wetlands. Groundwater flow under the Subject Property is generally in
17 the direction of Marina Del Rey Harbor and Santa Monica Bay.

18 **3.2. Past/Current Owners and Operators.**

19 The Complaint alleges CDE owned and/or operated the Subject
20 Property from 1955 until 1971. The Complaint alleges that during this period,
21 hazardous substances, including trichloroethylene ("TCE") and polychlorinated
22 biphenyls ("PCBs") were released onto the surface of parking lot/storage areas,
23 portions of which were not paved, at the Subject Property.

24 3.3. Since 1971, the Subject Property has been used for a variety of
25 industrial and commercial purposes.

26 3.4. The investigations performed to date have disclosed that
27 hazardous substances, including PCBs, TCE and tetrachloroethylene ("PCE")
28 believed to be associated with historical industrial/commercial operations, have

1 been released into the environment at the Subject Property, including
2 contamination of the soil and/or groundwater at and outside the boundaries of
3 the Subject Property.

4 3.5. The Complaint alleges that Glencoe has been the owner of the
5 Subject Property since 1999.

6 **3.6. Regulatory History.**

7 On or about June 13, 1997, DTSC issued an "Imminent and Substantial
8 Endangerment Determination and Remedial Action Order" ("Order") to CDE
9 with respect to the Subject Property pursuant to California Health and Safety
10 Code sections 25358.3(a), 25355.5, 58009, and 58010. CDE has been
11 cooperating with DTSC in preparation of a Remedial Investigation/Feasibility
12 Study ("RI/FS") and Remedial Action Plan ("RAP") for the Site. The RAP was
13 approved by DTSC on February 21, 2006.

14 **3.7. Owners/Operators.**

15 3.7.1 The Complaint alleges that CDE is a "person" as that term is
16 defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) who owned or
17 operated the Subject Property at which there has been the release or a threatened
18 release of hazardous substances.

19 3.7.2 The Complaint alleges that Glencoe is a "person" as that
20 term is defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) who
21 owns the Subject Property, at which there has been the release or a threatened
22 release of hazardous substances.

23 **4. DEFINITIONS**

24 Unless otherwise expressly provided herein, terms used in this
25 Consent Decree which are defined in CERCLA or in regulations promulgated
26 under CERCLA shall have the meaning assigned to them therein. Whenever
27 terms listed below are used anywhere in this Consent Decree or its exhibits if
28 any, the following definitions shall apply:

1 4.1. "Consent Decree" or "Decree" shall mean this Consent
2 Decree and its attachments and exhibits.

3 4.2. "Contractor" shall mean the individual, company or
4 companies retained by or on behalf of CDE or Glencoe to undertake and
5 complete the Work.

6 4.3. "Day" shall mean a calendar day unless expressly stated to be
7 a working day. In computing any period of time under this Consent Decree,
8 where the last day would fall on a Saturday, Sunday, or State or Federal holiday,
9 the period shall run until the close of business of the next working day.

10 4.4. "Effective Date" shall mean the date upon which an order by
11 the Court approving the Consent Decree becomes final and not subject to further
12 appeal.

13 4.5. "Facility" as used in this Consent Decree shall have the
14 same meaning as that term is defined by Section 101(9) of CERCLA, 42 U.S.C.
15 § 9601(9) and includes the vertical and areal extent of release of hazardous
16 substances at or from the Subject Property.

17 4.6. "Future Oversight Costs" shall mean all costs, including but
18 not limited to, interest, that DTSC incurs with regard to the Facility after the
19 Effective Date of the Consent Decree.

20 4.7. "Interim Mitigation Measures" shall mean the interim
21 mitigation measures required at the existing occupied buildings located on 42xx
22 Glencoe Avenue and on the Subject Property, as set forth in section 4 of the
23 Statement of Work.

24 4.8. "National Contingency Plan" or "NCP" shall refer to the
25 National Oil and Hazardous Substances Pollution Contingency Plan
26 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at
27 40 C.F.R. Part 300.

1 4.9. "Land Use Restrictions" shall mean the restrictions, controls
2 or obligations placed upon the use of the Subject Property or adjacent properties
3 pursuant to Paragraph 6.1.1.

4 4.10. "Offsite Adjacent Properties" shall mean 4150 Glencoe
5 Avenue and 42xx Glencoe Avenue.

6 4.11. "Operation and Maintenance" shall mean all activities
7 required to maintain the effectiveness of the RAP as required under the
8 Operation and Maintenance Plan and Agreement as developed by the
9 Performing Parties and approved by DTSC pursuant to this Consent Decree and
10 Exhibit "B" (Statement of Work, as defined herein).

11 4.12. "Past Response Costs" shall mean all costs, including, but not
12 limited to, interest, that DTSC has incurred with regard to the Facility up until
13 the Effective Date of the Consent Decree.

14 4.13. "Plan(s)" or "Workplan(s)" shall mean the plans and designs
15 developed by or on behalf of CDE or Glencoe which detail the elements of the
16 Work to be conducted pursuant to this Consent Decree.

17 4.14. "Performing Parties" shall mean CDE and/or Glencoe,
18 pursuant to the Statement of Work and this Consent Decree.

19 4.15. "Remedial Action" shall mean those activities, except for the
20 Interim Mitigation Measures and Operation and Maintenance (but including the
21 preparation and approval of the Operation and Maintenance Plan and Agreement
22 required by the Land Use Covenant) to be undertaken by the Performing Parties
23 to implement the RAP in accordance with Exhibit "B" (Statement of Work) and
24 the final Remedial Design Document.

25 4.16. "Report(s)" shall mean the reports developed by CDE and/or
26 Glencoe in compliance with this Consent Decree, detailing the Work and the
27 results of its implementation.

1 4.17. "Subject Property" shall mean the former CDE facility
2 located at 4144 Glencoe Avenue in the Venice area of Los Angeles, California
3 (also known as the 4144 Glencoe Site).

4 4.18. "Work" shall mean the implementation, in accordance with
5 this Consent Decree, of the tasks and activities defined herein, including but not
6 limited to the requirements of Paragraphs 5 and 6; and such work as may be
7 modified pursuant to the Paragraph 17 of this Consent Decree; and any
8 schedules or plans required to be submitted pursuant to this Consent Decree.

9 **5. GENERAL OBLIGATIONS RESPECTING WORK TO BE**
10 **PERFORMED**

11 **5.1. General.** CDE and Glencoe shall each perform the work
12 assigned to it in the Statement of Work ("SOW"), which is incorporated herein
13 by reference, and is attached hereto as Exhibit "B".

14 **5.2. Compliance With Applicable Laws.**

15 The Performing Parties shall carry out this Consent Decree in compliance
16 with all applicable state, local, and federal requirements including, but not
17 limited to, (subject to the Designation of Administering Agency described in
18 Paragraph 2.4 above) requirements to obtain permits and to assure worker safety
19 and the requirements of the NCP.

20 **5.3. Access to Subject Property and Other Properties.**

21 **5.3.1 Glencoe's Access Obligations**

22 Glencoe shall secure access to the Subject Property at all reasonable times
23 to CDE and DTSC and their respective employees, contractors, and consultants
24 for the purpose of conducting any activity reasonably related to implementation
25 of this Consent Decree, and shall ensure that tenants and/or future owners are
26 also obligated to provide such access. Glencoe and its successors in interest
27 (including without limitation any tenant or new owner of the Subject Property),
28 shall refrain from interfering with or adversely affecting the implementation,

1 integrity or protectiveness of any Work performed pursuant to this Consent
2 Decree. Access provided pursuant to this Consent Decree, including pursuant
3 to the Land Use Covenant required in Paragraph 6.1.1, shall be without
4 compensation by CDE. Glencoe shall not transfer or convey any interest in or
5 alienate the Subject Property, in whole or in part, without providing for future
6 access to the Subject Property, as set forth in this Paragraph and Paragraph 8.3
7 of this Consent Decree. Nothing in this Paragraph is intended nor shall be
8 construed to limit in any way the right of entry or inspection that DTSC or any
9 other agency may otherwise have by operation of any law. DTSC and its
10 authorized representatives shall have the authority to enter and move safely
11 about all areas at the Subject Property at all reasonable times for purposes of
12 ensuring compliance with this Consent Decree, including, but not limited to:
13 inspecting records, operating logs, sampling and analytic data, and contracts
14 relating to this Subject Property; reviewing the progress of CDE and/or Glencoe
15 in carrying out the terms of this Consent Decree; conducting such tests as DTSC
16 may deem necessary; and verifying the data submitted to DTSC by a Performing
17 Party.

18 Glencoe shall secure access to Offsite Adjacent Properties pursuant to
19 Paragraphs 6.1.1.2 and 6.1.1.3.

20 5.3.2 To the extent access is required to offsite properties,
21 other than the Subject Property and the Offsite Adjacent Properties for the
22 Work, CDE shall secure such access for CDE and DTSC and their respective
23 representatives and contractors as necessary to implement this Consent Decree,
24 the Remedial Action Plan or CDE tasks in the Statement of Work. If any access
25 required to complete the work is not obtained within thirty (30) days of the
26 Effective Date of the Consent Decree, or within sixty (60) days of the date
27 DTSC notifies CDE in writing that additional access beyond that previously
28 secured is necessary, CDE shall promptly notify DTSC and shall include in that

1 notification a summary of the steps CDE has taken to attempt to obtain access.
2 DTSC may, as it deems appropriate, assist CDE in obtaining access. CDE shall
3 reimburse DTSC for any costs incurred in obtaining such access to such offsite
4 properties other than the Subject Property and Offsite Adjacent Properties.

5 **5.4. Sampling, Data and Document Availability.**

6 CDE and Glencoe each covenants and represents that is has
7 provided to the other party and to the DTSC all sampling, testing, monitoring
8 and other data within its possession, custody or control regarding the
9 environmental condition of the Subject Property and adjacent properties. Each
10 Performing Party shall provide the other party and DTSC and their authorized
11 representatives with copies of all sampling, testing, monitoring or other data in
12 any way pertaining to the Work undertaken pursuant to this Consent Decree.
13 Performing Parties shall inform DTSC at least seven (7) days in advance of all
14 field sampling under this Decree, and shall allow DTSC and its authorized
15 representatives to take duplicates of any samples collected by the Performing
16 Parties pursuant to this Consent Decree. Each Performing Party shall maintain
17 a central repository of the data, reports, and other documents prepared by such
18 party pursuant to this Consent Decree.

19 **5.5. Record Retention.**

20 All data, final reports and other documents prepared pursuant to
21 this Consent Decree shall be preserved by each Performing Party preparing such
22 documents for a minimum of six (6) years after the conclusion of all activities
23 under this Consent Decree. If DTSC requests that some or all of these
24 documents be preserved for a longer period of time, each Performing Party shall
25 either comply with that request or deliver the documents to DTSC, or permit
26 DTSC to copy the documents prior to destruction. Within the preservation
27 period proscribed by DTSC, a Performing Party shall notify DTSC in writing, at
28

1 least two (2) months prior to destroying any documents prepared pursuant to
2 this Consent Decree.

3 **5.6. Government Liabilities.**

4 The State of California shall not be liable for any injuries or
5 damages to persons or property resulting from acts or omissions by a Performing
6 Party or its agents in carrying out activities pursuant to this Consent Decree, nor
7 shall the State of California be held as party to any contract entered into by a
8 Performing Party or its agents in carrying out activities pursuant to this Consent
9 Decree.

10 **5.7. Stop Work Order.**

11 In the event that DTSC determines that any activity (whether or not
12 pursued in compliance with this Consent Decree) may pose an imminent or
13 substantial endangerment to the health or safety of people on the Subject
14 Property or in the surrounding area or to the environment, DTSC may order a
15 Performing Party to stop further implementation of such activity for such period
16 of time needed to abate the endangerment (hereafter "Stop Work Order"). In the
17 event that DTSC determines that any activities (whether or not pursued in
18 compliance with this Consent Decree) are proceeding without DTSC
19 authorization, DTSC may order CDE or Glencoe to stop further implementation
20 of such activity for such period of time needed to obtain DTSC authorization, if
21 such authorization is appropriate. Any deadline in this Consent Decree directly
22 affected by a Stop Work Order, under this Subsection, shall be extended for the
23 term of the Stop Work Order.

24 **5.8. Emergency Response Action/Notification.**

25 In the event of any action or occurrence, such as a fire, earthquake,
26 explosion, or human exposure to hazardous substances caused by the release or
27 threatened release of a hazardous substance at the Subject Property, during the
28 performance of the Remedial Actions pursuant to this Consent Decree, CDE

1 and/or Glencoe, as appropriate, shall immediately take all appropriate action to
2 prevent, abate, or minimize such emergency, release, or immediate threat of
3 release and shall immediately notify the Project Manager. CDE and/or Glencoe,
4 as appropriate, shall take such action in consultation with the Project Manager
5 and in accordance with all applicable provisions of this Consent Decree. Within
6 seven (7) days of the onset of such an event, CDE shall furnish a report to
7 DTSC, signed by CDE's Project Coordinator, setting forth the events which
8 occurred and the measures taken in the response thereto. In the event that CDE
9 fails to take appropriate response action and DTSC takes the action instead,
10 DTSC may seek to recover the costs of its response action from CDE. Nothing
11 in this Paragraph shall be deemed to limit any other notification requirement to
12 which CDE may otherwise be subject by operation of law.

13 **5.9. Extension Requests.**

14 If either of the Performing Parties is unable to perform any
15 activity or submit any document within the time required under this Decree, that
16 party may, prior to expiration of the time, request an extension of time in
17 writing. The extension request shall include a justification for the delay. All
18 such requests shall be in advance of the date on which the activity or document
19 is due, and all reasonable requests for extensions shall be granted. If DTSC
20 determines that good cause exists for an extension, it will grant the request and
21 specify a new schedule in writing. That party shall comply with the new
22 schedule incorporated in this Consent Decree.

23 **6. SPECIFIC WORK TO BE PERFORMED**

24 **6.1. Subject Property Remediation Strategy.**

25 Work to be performed by Performing Parties under this Consent Decree shall
26 include:
27
28

1 **6.1.1 Land Use Restrictions**

2 6.1.1.1 Land Use Covenant for the Subject Property.

3 Upon entry of this Consent Decree, Glencoe shall record a Land Use
4 Covenant substantially in the form specified in Exhibit C that is enforceable
5 under the laws of California, and shall provide a current title insurance
6 commitment or some other evidence of title acceptable to DTSC and CDE
7 which shows title to the land described in the easement to be free and clear of all
8 prior liens and encumbrances that could interfere with the implementation of the
9 Consent Decree, the Remedial Action Plan, or the Statement of Work. Glencoe
10 may seek to have the Land Use Covenant modified at the completion of the
11 Remedial Action as appropriate at that time, pursuant to Section 6 of the Land
12 Use Covenant.

13 6.1.1.2 Glencoe's Access Obligations for 42xx

14 Glencoe Avenue.

15 Glencoe shall secure access to the 42xx Glencoe Avenue property by
16 means of contract or otherwise with Parr-Bohn to record a Land Use Covenant
17 within 30 days of the Effective Date of this Consent Decree requiring Parr-Bohn
18 and its tenants, successors and assigns to provide access at all reasonable times
19 to CDE and DTSC, and their respective employees, contractors and consultants
20 for and prohibiting Parr-Bohn and its tenants, successors and assigns from
21 interfering with implementation of the Remedy for the 4144 Glencoe Avenue
22 Site or with the implementation, operation and maintenance of interim
23 mitigation measures at 42xx Glencoe Avenue. Such access for performance of
24 Work pursuant to this Consent Decree shall be provided without compensation
25 by CDE.

26 6.1.1.3 Glencoe's Access Obligations for 4150

27 Glencoe Avenue.

1 Glencoe shall secure access to the 4150 Glencoe Avenue property by
2 means of contract or otherwise with Bradmore to record a Land Use Covenant
3 within 30 days of the Effective Date of this Consent Decree requiring Bradmore
4 and its tenants, successors and assigns to provide access at all reasonable times
5 to CDE and DTSC, and their respective employees, contractors and consultants
6 for and prohibiting Bradmore and its tenants, successors and assigns from
7 interfering with implementation of the Remedy for the 4144 Glencoe Avenue
8 Site. Such access for performance of Work pursuant to this Consent Decree
9 shall be provided without compensation by CDE.

10 6.1.2 Glencoe shall be responsible for: (i) implementation,
11 operation and maintenance of any vapor barrier control system or other
12 engineering controls required for future occupied buildings constructed at the
13 Subject Property in accordance with the RAP and this Consent Decree; and (ii)
14 implementation of land use restrictions in the form of covenants or otherwise as
15 necessary to implement sampling, monitoring, and reporting following the five-
16 year review.

17 **6.2. Interim Mitigation Measures.**

18 6.2.1 Interim Mitigation Measures for 42xx Glencoe Avenue
19 CDE shall be responsible for implementation, operation and maintenance
20 of any interim mitigation measure or other engineering controls required in the
21 existing occupied buildings at 42xx Glencoe Avenue in accordance with section
22 4.2 of the SOW.

23 6.2.2 Interim Mitigation Measures for the Subject Property
24 Glencoe and CDE shall be responsible for implementation, operation and
25 maintenance of any interim mitigation measure or other engineering controls
26 required for occupancy of the existing building at the Subject Property in
27 accordance with section 4.1 of the SOW.
28

1 **6.3. Remedial Design Document and Implementation.**

2 Upon DTSC approval of a Remedial Design Document submitted
3 pursuant to the requirements set forth in the SOW, CDE shall implement the
4 Remedial Design Document. The Remedial Design Document may include
5 provisions for certain Work to be performed at the adjacent property at 4150
6 Glencoe Avenue, as specified in section 3.2.1 of the SOW.

7 **6.4. Public Participation Plan ("PPP") (Community**
8 **Relations).**

9 Performing Parties shall work cooperatively with DTSC in ensuring that
10 the public and affected community are involved in DTSC's decision-making
11 process. Any such public participation activities shall be conducted in
12 accordance with California Health and Safety Code Section 25356.1(d), DTSC's
13 Public Participation Policy and Guidance Manual, and with DTSC's review and
14 prior approval.

15 **6.5. California Environmental Quality Act ("CEQA").**

16 Upon DTSC request, CDE and/or Glencoe shall submit any information
17 necessary to facilitate DTSC's compliance with the California Environmental
18 Quality Act.

19 **6.6 Certification of Completion of Remedial Action.**

20 Within ninety (90) days of when CDE concludes that the Remedial Action
21 has been fully performed, CDE shall schedule and conduct a pre-certification
22 inspection to be attended by CDE and DTSC. If, after the pre-certification
23 inspection, CDE maintains that the Remedial Action has been fully performed,
24 CDE shall submit a written report requesting that DTSC issue a Certification of
25 Completion of Remedial Action within 30 days of the receipt of said report. In
26 the report, a registered engineer and CDE's Project Coordinator shall state that
27 the Remedial Action has been completed in full satisfaction of the requirements
28 of this Consent Decree. The written report shall include as-built drawings

1 signed and stamped by a professional engineer. The report shall contain the
2 following statement, signed by a responsible corporate official of CDE or the
3 Project Coordinator:

4 *To the best of my knowledge, after thorough*
5 *investigation, I certify that the information contained in*
6 *or accompanying this submission is true, accurate and*
7 *complete. I am aware that there are significant penalties*
8 *for submitting false information, including the possibility*
9 *of fine and imprisonment for knowing violations.*

10 If, after completion of the pre-certification inspection and receipt and review of
11 the written report, DTSC, determines that the Remedial Action or any portion
12 thereof has not been completed in accordance with this Consent Decree, DTSC
13 will notify CDE in writing of a schedule for the performance of such activities
14 that must be undertaken pursuant to this Consent Decree and the SOW to
15 complete the Remedial Action, or DTSC may require CDE to submit a schedule
16 for such work to DTSC for approval pursuant to Paragraph 5.8; provided
17 however, that DTSC may only require CDE to perform such activities pursuant
18 to this Paragraph to the extent that such activities are consistent with the RAP
19 and SOW as those terms are defined herein. CDE shall perform all activities
20 described in the notice in accordance with the specifications and schedules
21 established therein, subject to the right to invoke the dispute resolution
22 procedures set forth in this Consent Decree. If DTSC concludes, based on the
23 initial or any subsequent report requesting Certification of Completion of
24 Remedial Action that the Remedial Action has been performed in accordance
25 with this Consent Decree, DTSC will so certify in writing to the Performing
26 Parties. This certification shall constitute the Certification of Completion of the
27 Remedial Action for purposes of this Consent Decree, including, but not limited
28 to, Paragraph 11.1 of this Consent Decree (DTSC's Covenant Not to Sue).

1 Certification of Completion of the Remedial Action shall not affect the
2 Performing Parties' other obligations under this Consent Decree.

3 **6.7. Certification of Completion of Work by CDE.**

4 Within ninety (90) days of when CDE concludes that all phases of the Work for
5 which it is responsible have been fully performed, CDE shall schedule and
6 conduct a pre-certification inspection to be attended by CDE, DTSC and
7 Glencoe. If, after the pre-certification inspection, CDE maintains that the Work
8 for which it is responsible has been fully performed, CDE shall submit a written
9 report to DTSC with a copy to Glencoe requesting that DTSC issue a
10 Certification of Completion of Work by CDE within 30 days of the receipt of
11 said report. The report shall contain the following statement, signed by a
12 responsible corporate official of CDE or the Project Coordinator:

13 *To the best of my knowledge, after thorough*
14 *investigation, I certify that the information contained in*
15 *or accompanying this submission is true, accurate and*
16 *complete. I am aware that there are significant penalties*
17 *for submitting false information, including the possibility*
18 *of fine and imprisonment for knowing violations.*

19 If, after completion of the pre-certification inspection and receipt and review of
20 the written report, DTSC determines that the Work for which CDE is
21 responsible or any portion thereof has not been completed in accordance with
22 this Consent Decree, DTSC will notify CDE and Glencoe in writing of a
23 schedule for the performance of such activities that must be undertaken by CDE
24 pursuant to this Consent Decree to complete the Work, or DTSC may require
25 CDE to submit a schedule for such Work to DTSC for approval pursuant to
26 Paragraph 5.8; provided however, that DTSC may only require CDE to perform
27 such activities pursuant to this Paragraph to the extent that such activities are
28 consistent with the RAP and SOW as those terms are defined herein. CDE shall

1 perform all activities described in the notice in accordance with the
2 specifications and schedules established therein, subject to the right to invoke
3 the dispute resolution procedures set forth in this Consent Decree. If DTSC
4 concludes, based on the initial or any subsequent report requesting Certification
5 of Completion of Work that the Work has been performed in accordance with
6 this Consent Decree, DTSC will so certify in writing to CDE and Glencoe.
7 Certification of Completion of the Work by CDE shall not affect the Performing
8 Parties' other obligations under this Consent Decree.

9 **6.8. Certification for Completion of Work by Glencoe.**

10 Within ninety (90) days of when Glencoe concludes that all phases of the Work
11 for which it is responsible have been fully performed, Glencoe shall schedule
12 and conduct a pre-certification inspection to be attended by Glencoe, DTSC and
13 CDE. If, after the pre-certification inspection, Glencoe maintains that the Work
14 for which it is responsible has been fully performed, Glencoe shall submit a
15 written report to DTSC with a copy to CDE requesting that DTSC issue a
16 Certification of Completion of Work by Glencoe within 30 days of the receipt of
17 said report. The report shall contain the following statement, signed by a
18 responsible corporate official of Glencoe or the Project Coordinator:

19 *To the best of my knowledge, after thorough*
20 *investigation, I certify that the information contained in*
21 *or accompanying this submission is true, accurate and*
22 *complete. I am aware that there are significant penalties*
23 *for submitting false information, including the possibility*
24 *of fine and imprisonment for knowing violations.*

25 If, after completion of the pre-certification inspection and receipt and review of
26 the written report, DTSC determines that the Work for which Glencoe is
27 responsible or any portion thereof has not been completed in accordance with
28 this Consent Decree, DTSC will notify Glencoe and CDE in writing of a

1 schedule for the performance of such activities that must be undertaken by
2 Glencoe pursuant to this Consent Decree to complete the Work, or DTSC may
3 require Glencoe to submit a schedule for such Work to DTSC for approval
4 pursuant to Paragraph 5.8; provided however, that DTSC may only require
5 Glencoe to perform such activities pursuant to this Paragraph to the extent that
6 such activities are consistent with the RAP and SOW as those terms are defined
7 herein. Glencoe shall perform all activities described in the notice in accordance
8 with the specifications and schedules established therein, subject to the right to
9 invoke the dispute resolution procedures set forth in this Consent Decree. If
10 DTSC concludes, based on the initial or any subsequent report requesting
11 Certification of Completion of Work that the Work has been performed in
12 accordance with this Consent Decree, DTSC will so certify in writing to
13 Glencoe and CDE. Certification of Completion of the Work by Glencoe shall
14 not affect the Performing Parties' other obligations under this Consent Decree.

15 **6.9. Certification of Completion of Work Jointly Performed**
16 **by CDE and Glencoe.**

17 Within ninety (90) days of when CDE and Glencoe conclude that all
18 phases of any Work for which they are jointly responsible have been fully
19 performed, CDE and Glencoe shall schedule and conduct a pre-certification
20 inspection to be attended by CDE, and DTSC and Glencoe. If, after the pre-
21 certification inspection, CDE and Glencoe maintain that the Work for which
22 they are jointly responsible has been fully performed, CDE and Glencoe shall
23 submit a written report to DTSC requesting that DTSC issue a Certification of
24 Completion of Work Jointly Performed by CDE and Glencoe within 30 days of
25 the receipt of said report. The report shall contain the following statement,
26 signed by responsible corporate officials of CDE and Glencoe or the Project
27 Coordinator:
28

1 To the best of my knowledge, after thorough
2 investigation, I certify that the information contained
3 in or accompanying this submission is true, accurate
4 and complete. I am aware that there are significant
5 penalties for submitting false information, including
6 the possibility of fine and imprisonment for knowing
7 violations.

8 If, after completion of the pre-certification inspection and receipt and
9 review of the written report, DTSC determines that the Work for which CDE
10 and Glencoe are jointly responsible or any portion thereof has not been
11 completed in accordance with this Consent Decree, DTSC will notify CDE and
12 Glencoe in writing of a schedule for the performance of such activities that must
13 be undertaken by CDE and Glencoe pursuant to this Consent Decree to complete
14 the Work, or DTSC may require CDE and Glencoe to submit a schedule for
15 such Work to DTSC for approval pursuant to Paragraph 5.8; provided however,
16 that DTSC may only require CDE and Glencoe to perform such activities
17 pursuant to this Paragraph to the extent that such activities are consistent with
18 the RAP and SOW as those terms are defined herein. CDE and Glencoe shall
19 perform all activities described in the notice in accordance with the
20 specifications and schedules established therein, subject to the right to invoke
21 the dispute resolution procedures set forth in this Consent Decree. If DTSC
22 concludes, based on the initial or any subsequent report requesting Certification
23 of Completion of Work that the Work has been performed in accordance with
24 this Consent Decree, DTSC will so certify in writing to CDE and Glencoe.
25 Certification of Completion of the Work by CDE and Glencoe shall not affect
26 the Performing Parties' other obligations under this Consent Decree.

1 **7. PAYMENT OF DTSC COSTS**

2 **7.1. Past Response Costs.** Within sixty (60) days of the
3 Effective Date of this Consent Decree, CDE and Glencoe shall reimburse DTSC
4 for any unpaid Past Response Costs. DTSC will provide CDE and Glencoe with
5 an accounting and a bill for all Past Response Costs. CDE or Glencoe may
6 provide notice of any challenge to the bill for Past Response Costs by letter
7 mailed to DTSC and within thirty (30) days after CDE and Glencoe receive the
8 bill. The challenge will then be subject to the dispute resolution provisions of
9 this Consent Decree. Unless challenged by Glencoe or CDE, CDE and Glencoe
10 shall pay the Past Response Costs that are not inconsistent with the NCP by
11 check within sixty (60) days after receipt of the bill. The check shall be
12 disbursed to:

13
14 California Department of Toxic Substances Control
15 Attention: Accounting Unit
16 Cornell-Dubilier Subject Property
17 P.O. Box 806
 Sacramento, California 95812-0806

18 A copy of the transmittal letter and a copy of the check shall be sent to the
19 Project Coordinator and DTSC's Project Manager at the address specified in
20 subparagraph 7.2.6.

21 **7.2. DTSC Future Oversight Costs.**

22 7.2.1 CDE will reimburse DTSC for its Future Oversight
23 Costs, including interest, associated with CDE's performance of the Work
24 pursuant to the RAP and this Consent Decree. DTSC will provide CDE with an
25 accounting of all Future Oversight Costs as they accrue. DTSC will provide
26 quarterly bills for its Future Oversight Costs. CDE may provide notice of any
27 challenge to the quarterly bill for Future Oversight Costs by letter mailed to
28 DTSC and within thirty (30) days after CDE receives the quarterly bill. The

1 challenge will then be subject to the dispute resolution provisions of this
2 Consent Decree. Unless challenged by CDE, CDE shall pay the Future
3 Oversight Costs that are not inconsistent with the NCP by check within sixty
4 (60) days after receipt of the Bill. The check shall be disbursed to:

5
6 California Department of Toxic Substances Control
7 Attention: Accounting Unit
8 Cornell-Dubilier Subject Property
9 P.O. Box 806
Sacramento, California 95812-0806

10 A copy of the transmittal letter and a copy of the check shall be sent to the
11 Project Coordinator and DTSC's Project Manager at the address specified in
12 subparagraph 7.2.6.

13 7.2.2 Glencoe will reimburse DTSC for its Future Oversight
14 Costs, including interest, associated with Glencoe's performance of the Work
15 pursuant to the RAP and this Consent Decree. DTSC will provide Glencoe with
16 an accounting of all Future Oversight Costs as they accrue. DTSC will provide
17 quarterly bills for its Future Oversight Costs. Glencoe may provide notice of
18 any challenge to the quarterly bill for Future Oversight Costs by letter mailed to
19 DTSC and within thirty (30) days after Glencoe receives the quarterly bill. The
20 challenge will then be subject to the dispute resolution provisions of this
21 Consent Decree. Unless challenged by Glencoe, Glencoe shall pay the Future
22 Oversight Costs that are not inconsistent with the NCP by check within sixty
23 (60) days after receipt of the bill. The check shall be disbursed to:

24
25 California Department of Toxic Substances Control
26 Attention: Accounting Unit
27 Cornell-Dubilier Subject Property
28 P.O. Box 806
Sacramento, California 95812-0806

1 A copy of the transmittal letter and a copy of the check shall be sent to the
2 Project Coordinator and DTSC's Project Manager at the address specified in
3 subparagraph 7.2.6.

4 7.2.3 CDE and Glencoe will reimburse DTSC for their
5 Future Oversight Costs associated with CDE's and Glencoe's performance of
6 the Work for which CDE and Glencoe are jointly responsible pursuant to the
7 RAP and this Consent Decree. DTSC will provide CDE and Glencoe with an
8 accounting of all Future Oversight Costs as they accrue. DTSC will provide
9 quarterly bills for its Future Oversight Costs. CDE and/or Glencoe may provide
10 notice of any challenge to the quarterly bill for Future Oversight Costs by letter
11 mailed to DTSC and within thirty (30) days after CDE and Glencoe receive the
12 quarterly bill. The challenge will then be subject to the dispute resolution
13 provisions of this Consent Decree. Unless challenged by CDE or Glencoe, CDE
14 and Glencoe shall pay the Future Oversight Costs that are not inconsistent with
15 the NCP by check within sixty (60) days after receipt of the bill. The check
16 shall be disbursed to:

17 California Department of Toxic Substances Control
18 Attention: Accounting Unit
19 Cornell-Dubilier Subject Property
20 P.O. Box 806
Sacramento, California 95812-0806

21 A copy of the transmittal letter and a copy of the check shall be sent to the
22 Project Coordinator and DTSC's Project Manager at the address specified in
23 subparagraph 7.2.6.

24 7.2.4 If a bill is not paid by a Performing Party within sixty
25 (60) days after it is sent by DTSC, that Performing Party may be deemed to be
26 in material default of this Consent Decree. Any billing not paid within sixty
27 (60) days is subject to interest calculated from the date of the billing pursuant to
28 California Health and Safety Code section 25360.1.

1 7.2.5 If a Performing Party disputes a bill, or any part
2 thereof, it shall notify DTSC's assigned project manager and attempt to
3 informally resolve the dispute with DTSC's Project Manager and Branch Chief.
4 If the Performing Party desires to formally request dispute resolution with
5 regard to the billing, it shall make a request for dispute resolution as set out
6 below in paragraph 9. Such request for dispute resolution shall be made in
7 writing no later than 45 days after the date of receipt by the performing Party of
8 the bill in dispute. The filing of a notice of dispute shall not stay the accrual of
9 interest on any unpaid costs pending resolution of the dispute. If the dispute
10 pertains to only a portion of the costs included in the billing, the Performing
11 Party shall pay all costs which are undisputed.

12 7.2.6 Copies of the transmittal letter and check for payment
13 of DTSC oversight costs made by a Performing Party pursuant to subparagraphs
14 7.1.1 or 7.1.2 and/or notices from a Performing Party to DTSC pursuant to
15 subparagraph 7.1.4 shall be submitted to that Performing Party's Project
16 Coordinator and DTSC's Project Manager at the following addresses:

17
18 Project Manager
19 Department of Toxic Substances Control
20 1011 North Grandview Avenue
21 Glendale, CA 91201-2205

22 with copies provided to CDE or Glencoe as applicable:

23 To Glencoe: : Attention: David Bohn
24 Glencoe Properties, LLC
25 721 Santa Monica Blvd.
26 Santa Monica, CA 90401-2685
27
28

1 with a copy to: Peter H. Weiner
2 Paul, Hastings, Janofsky & Walker, LLP
3 55 Second Street
San Francisco, CA 94105

4 To CDE: Cornell-Dubilier Electronics, Inc.
5 c/o Laurie Burt, Esq.
6 Foley Hoag LLP
7 Seaport World Trade Center West
8 155 Seaport Boulevard
Boston, MA 02210

9 with a copy to: Victor Whitworth, CFO
10 Cornell-Dubilier Electronics, Inc.
11 140 Technology Place
Liberty, SC 29657

12
13 **8. CONVEYANCE OF PROPERTY**

14 8.1. Within 21 calendar days after the Effective Date of this Consent
15 Decree, Glencoe shall record a conformed copy of this Consent Decree with the
16 County Recorder for Los Angeles County.

17 8.2. Subject to Paragraph 2.3 of this Consent Decree, Glencoe, and any
18 other entity who acquires an interest in all or any portion of the Subject
19 Property, and their respective successors and assigns (collectively, "Successor
20 Owners"), may freely alienate its real property interest in the Subject Property.

21 8.3. At least 30 days prior to the conveyance or transfer of interest in
22 the Subject Property, including, but not limited to, fee interests, leasehold
23 interests, and/or mortgage interests, Glencoe, and any Successor Owners shall
24 give the proposed grantee a copy of (i) this Consent Decree, (ii) any Land Use
25 Covenant required by this Consent Decree, and (iii) any other instrument by
26 which an interest in real property has been conveyed that confers a right of
27 access to the Subject Property and/or a right to enforce restrictions on the use of
28 the Subject Property pursuant to this Consent Decree or otherwise. At least 30

1 days prior to such conveyance or transfer, Glencoe, and any Successor Owner,
2 shall also give written notice to DTSC and CDE of the proposed conveyance or
3 transfer, including the name and address of the proposed grantee, and the date
4 on which notice and a copy of the Consent Decree, Land Use Covenant, and any
5 other access easements and/or restrictive easements were given to the proposed
6 grantee, and the proposed grantee's intended use of the Subject Property.

7 8.4. A Successor Owner that satisfies the requirements of 42 U.S.C.
8 § 9601(40)(H) as of the Effective Date of this Consent Decree and who executes
9 the "Agreement and Certification of Successor Owner" in accordance with
10 Paragraph 8.5 below, shall assume all rights, benefits and obligations conferred
11 upon Glencoe under this Consent Decree including: (a) the Covenant Not to
12 Sue provided by DTSC under Paragraph 11.1, of this Consent Decree; (b) the
13 Release and Covenant Not to Sue provided by CDE under Paragraph 11.2.2, of
14 this Consent Decree, and (c) the Contribution Protection provided under
15 Paragraph 13 of this Consent Decree, except that with respect to performance of
16 the Work required under the Consent Decree, such Successor Owner may
17 assume responsibility for performance of some or all of the Work that Glencoe
18 is obligated to perform pursuant to this Consent Decree only with the prior
19 written approval of DTSC and CDE, which approval shall not be unreasonably
20 withheld, provided that to the extent that any Successor Owner fails to perform
21 any portion of the assumed Work in accordance with this Consent Decree,
22 Glencoe will remain solely responsible to perform such Work.

23 8.5. Prior to or simultaneously with the transfer of ownership of the
24 Subject Property, the proposed Successor Owner shall sign the "Agreement and
25 Certification of Successor Owner" attached hereto as Exhibit D, thereby
26 consenting to be bound by the applicable terms and conditions of the Consent
27 Decree. These signed agreements will be sent to DTSC and CDE within thirty
28 days of their execution. The covenants not to sue set forth in Paragraph 11 shall

1 not be effective with respect to any Successor Owner who fails to execute the
2 Agreement and Certification of Successor Owner set forth in Exhibit D.
3 Notwithstanding the foregoing, any obligation to provide CDE with notice or
4 documents under this paragraph shall terminate upon issuance by DTSC of all
5 required Certifications of Completion of Work pursuant to Paragraphs 6.7
6 through 6.9.

7 **9. DISPUTE RESOLUTION**

8 Unless otherwise expressly provided for in this Consent Decree, the
9 dispute resolution procedures of this Paragraph shall be the exclusive
10 mechanism to resolve disputes arising under or with respect to this Consent
11 Decree. However, the procedures set forth in this Paragraph shall not apply to
12 actions by DTSC to enforce obligations that have not been disputed in
13 accordance with this Paragraph.

14 **9.1. Notice of Dispute.**

15 Any dispute which arises under or with respect to this Consent Decree
16 shall in the first instance be the subject of informal negotiations between the
17 parties to the dispute. The period for informal negotiations shall not exceed
18 twenty (20) days from the time the dispute arises, unless it is modified by
19 written agreement of the parties to the dispute. The dispute shall be considered
20 to have arisen when one party sends the other parties a written Notice of
21 Dispute.

22 **9.2. Statements of Position.**

23 In the event that the parties cannot resolve a dispute by informal
24 negotiations under the preceding Paragraph, then the position advanced by
25 DTSC shall be considered binding unless, within ten (10) days after the
26 conclusion of the informal negotiation period, the Performing Party involved in
27 the dispute shall serve on DTSC a written Statement of Position on the matter in
28 dispute, including, but not limited to, any factual data, analysis or opinion

1 supporting that position and any supporting documentation relied upon by that
2 Performing Party. Within twenty-one (21) days after receipt of the Performing
3 Party's Statement of Position, DTSC will serve on the involved Performing
4 Party its Statement of Position, including, but not limited to, any factual data,
5 analysis, or opinion supporting that position and all supporting documentation
6 relied upon by DTSC. Within ten (10) days after receipt of DTSC's Statement
7 of Position, the Performing Party may submit a Reply. An administrative
8 record of the dispute shall be maintained by DTSC and shall contain all
9 statements of position, including supporting documentation, submitted pursuant
10 to this Paragraph.

11 **9.3. Administrative Decision.**

12 The DTSC Director or his or her designee shall issue a final
13 administrative decision resolving the dispute that shall be based on the
14 administrative record compiled pursuant to Paragraph 9.2. The decision shall be
15 binding upon all parties involved in the dispute, subject only to the right to
16 seek judicial review of the administrative decision pursuant to Paragraph 9.4.

17 **9.4. Judicial Review.**

18 Any administrative decision made by DTSC pursuant to Paragraph 9.3
19 shall be reviewable by this Court, provided that a motion for judicial review of
20 the decision is filed by the Performing Party involved in the dispute with the
21 Court and served on all Parties within ten (10) days of receipt of DTSC's
22 decision. The motion shall include a description of the matter in dispute, the
23 efforts made by the parties to resolve it, the relief requested, and the schedule, if
24 any, within which the dispute must be resolved to ensure orderly implementation
25 of this Consent Decree. DTSC may file a response to a Performing Party's
26 motion. In proceedings on any dispute that is accorded review on the
27 administrative record under applicable principles of law, the Performing Party
28 shall have the burden of demonstrating that DTSC's decision is arbitrary and

1 capricious or otherwise not in accordance with law. In the event that a dispute is
2 accorded review on the administrative record under applicable principles of law,
3 judicial review of DTSC's decision shall be on the administrative record
4 compiled pursuant to Paragraph 9.2.

5 9.5. The invocation of dispute resolution procedures under this
6 Paragraph shall not extend, postpone or affect in any way any obligation of the
7 Performing Parties under this Consent Decree, not directly in dispute, unless
8 DTSC or the Court agrees otherwise. Stipulated penalties with respect to the
9 disputed matter shall continue to accrue but payment shall be stayed pending
10 resolution of the dispute as provided in Paragraph 14.4. Notwithstanding the
11 stay of payment, stipulated penalties shall accrue from the first day of
12 noncompliance with any applicable provision of this Consent Decree. In the
13 event that CDE does not prevail on the disputed issue, stipulated penalties shall
14 be assessed and paid as provided in Paragraph 14.9.

15 **10. TERMINATION AND SATISFACTION**

16 This Consent Decree shall not terminate until DTSC issues a
17 Certification of Completion of Work by CDE pursuant to paragraph 6.6, a
18 Certification of Completion of Work by Glencoe pursuant to paragraph 6.7, and
19 for any joint Work, a Certification of Completion of Work Jointly Performed by
20 CDE and Glencoe pursuant to Paragraph 6.8. When such Certifications have
21 been issued, this Consent Decree shall be terminated except for the provisions of
22 Paragraphs 5.6, 11.1, 11.2, 11.3, 12 and 13, and such other continuing rights and
23 obligations of the parties under this Consent Decree.

24 **11. COVENANTS NOT TO SUE AND RESERVATIONS OF RIGHTS**

25 11.1. DTSC's Covenant Not to Sue. In consideration for the work
26 that will be performed and the payments that have been and will be made by
27 CDE and Glencoe under the terms of this Consent Decree and subject to
28 Paragraph 11.3 of this Consent Decree, DTSC covenants not to sue or take

1 administrative action against CDE and Glencoe to compel response actions or
2 recover response costs relating to the Facility pursuant to section 107(a) of
3 CERCLA, 42 U.S.C. section 9607 or sections 25355.5, 25358.3, and 25360 of
4 the California Health and Safety Code. These covenants not to sue shall take
5 effect upon the Effective Date of this Consent Decree. These covenants not to
6 sue are conditioned upon the satisfactory performance by Performing Parties of
7 their obligations under this Consent Decree. These covenants not to sue extend
8 only to the CDE and Glencoe and do not extend to any other person or entity.

9 **11.2. Covenants Not to Sue By CDE and Glencoe.**

10 11.2.1 Covenants Not to Sue DTSC. CDE and Glencoe
11 each hereby covenant not to sue and agree not to assert any claims or causes of
12 action against DTSC or its officers and employees regarding any matter relating
13 to the Consent Decree, or with respect to any regulatory action taken by DTSC
14 involving the Facility prior to the execution of the Consent Decree, including,
15 but not limited to:

16 11.2.1.1. any direct or indirect claim for
17 reimbursement from the California Hazardous Substance Account;

18 11.2.1.2 any claims against the State under section
19 107(a) of CERCLA, 42 U.S.C. section 9607 or sections 25355.5, 25358.3, and
20 25360 of the California Health and Safety Code.

21 **11.2.2 Reciprocal Covenants Not to Sue.**

22 Except with respect to obligations arising under this Consent Decree and except
23 with respect to matters reserved in paragraphs 11.3.1, 11.3.3, 11.4, and 11.5 of
24 this Consent Decree, Glencoe and CDE each covenants not to sue or assert
25 against the other any claims or causes of action arising out of or relating to
26 environmental contamination existing as of the date of final execution of this
27 Consent Decree at or from the Facility, 4150 Glencoe Avenue, and/or 42xx
28 Glencoe Avenue, including, but not limited to any claims under section 107(a)

1 or 113 of CERCLA, 42 U.S.C. sections 9607 and 9613, and sections 25355.5,
2 25358.3, and 25360 of the California Health and Safety Code, or under any
3 other state or federal statutory or common law.

4 11.3. DTSC's Reservation of Rights. The Covenant Not to Sue set
5 forth in Paragraph 11.1 above does not pertain to any matters other than those
6 expressly specified therein. DTSC reserves and this Consent Decree is without
7 prejudice to all rights against CDE and Glencoe with respect to all other matters,
8 including but not limited to, the following:

9 11.3.1 Claims based on a failure by CDE, Glencoe or
10 their heirs, successors or assignees to meet a requirement of or to otherwise
11 enforce this Consent Decree;

12 11.3.2 criminal liability;

13 11.3.3 liability for damages for injury to, destruction
14 of, or loss of natural resources, and for the costs of any natural resource damage
15 assessment incurred by agencies;

16 11.3.4 liability for violations of any other local, state or
17 federal law or regulations not covered by this Consent Decree or any liability
18 not covered by this Consent Decree arising from past, present or future
19 ownership, operation, disposal, release, or threat of release of hazardous
20 substances, pollutants, or contaminants, at other sites besides the Facility;

21 11.3.5 any liability for activities CDE or Glencoe
22 engages in at the Facility that constitute violations of federal or state law and
23 which occur after the Effective Date of the Consent Decree.

24 11.4. In addition to the reservations set out in paragraph 11.3,
25 DTSC reserves, and this Consent Decree is without prejudice to, the right to
26 institute proceedings in this action or in a new action seeking to compel CDE or
27 Glencoe to take a response action or to reimburse DTSC for additional response
28 costs at the Facility if, subsequent to lodging of the Consent Decree, conditions

1 at the Facility previously unknown to DTSC as of the lodging of this Consent
2 Decree are discovered, or information, previously unknown to DTSC, is
3 received in whole or in part, and these previously unknown conditions or this
4 information indicate(s) that the remedy set forth for the Facility is not protective
5 of human health and the environment.

6 **11.5. Further Actions Necessary to Protect Public.**

7 Nothing herein shall limit the power and authority of DTSC or of any
8 other State agency to take, direct, or order all actions necessary to protect public
9 health, welfare, or the environment or to prevent, abate or minimize an actual or
10 threatened release of hazardous substances, pollutants, or contaminants, or
11 hazardous or solid waste on, at, or from the Subject Property. Further, nothing
12 herein shall prevent DTSC from seeking legal or equitable relief to enforce the
13 terms of this Consent Decree.

14 **12. WAIVER OF EQUITABLE DEFENSES**

15 In any subsequent administrative or judicial proceeding initiated by
16 DTSC to enforce this Consent decree, neither CDE nor Glencoe shall contest its
17 obligation to fully comply with this Consent Decree; provided, however, that
18 nothing in this Paragraph affects the enforceability of the covenants not to sue
19 set forth in Paragraph 11. In such proceedings, CDE and Glencoe may raise any
20 defenses that are relevant to the issue of whether or not they have complied with
21 the terms of the Consent Decree.

22 **13. CONTRIBUTION PROTECTION**

23 With regard to claims for contribution against CDE or Glencoe for
24 matters addressed in this Consent Decree, the Parties agree, and the Court finds
25 as follows:

26 13.1. This Consent Decree constitutes a judicially approved
27 settlement within the meaning of CERCLA § 113(f)(2) 42 U.S.C. § 9613(f)(2).
28

1 13.2. This Consent Decree requires that CDE and Glencoe pay
2 certain costs and undertake certain response actions at the Facility.

3 13.3. CDE and Glencoe are entitled to the Contribution Protection
4 provided by CERCLA § 113(f)(2), 42. U.S.C. Section 9613(f)(2) and by state
5 statutory and common law, for the "matters addressed" in this Consent Decree.

6 13.4. The "matters addressed" in this Consent Decree include (1)
7 the Work, (2) past and future response actions; and (3) past and future response
8 costs incurred pursuant to this Consent Decree, and (4) damages for injury to or
9 loss of natural resources relating to the Facility.

10 13.5. Nothing in this Section shall limit DTSC's rights against any
11 third person or entity that is not a party to this Consent Decree, including,
12 without limitation, DTSC's right to enforce a cleanup of the Facility and to
13 recover any response costs associated with that cleanup.

14 **14. STIPULATED PENALTIES**

15 **14.1. Liability for Stipulated Penalties.**

16 Except as otherwise provided in this Consent Decree, CDE and
17 Glencoe shall be liable to DTSC for stipulated penalties for material failure to
18 comply with their respective requirements of this Consent Decree, unless
19 excused under Paragraph 15. The following stipulated penalties shall accrue per
20 violation per day for any material noncompliance with the requirements of this
21 Consent Decree:

22 Penalty Per Violation Per Day	Period of Noncompliance
23 \$1,000	1st through 30th day
24 \$2,000	31st day and beyond

25 14.2. Accrual of Stipulated Penalties. All stipulated penalties shall
26 begin to accrue on the day after the complete and adequate performance is due
27 or the day a violation occurs, and shall continue to accrue through the final day
28 of the correction of the noncompliance or completion of the activity. Nothing

1 herein shall prevent the simultaneous accrual of separate penalties for separate
2 violations of this Consent Decree.

3 **14.3. Noncompliance.**

4 Following DTSC's determination that CDE or Glencoe failed to comply
5 with a requirement of this Consent Decree, DTSC may give CDE or Glencoe
6 written notification of the same and describe the noncompliance. If DTSC has
7 determined that CDE or Glencoe has failed to comply with a requirement of this
8 Consent Decree, DTSC may send CDE or Glencoe a written demand for the
9 payment of stipulated penalties. However, penalties shall accrue as provided in
10 the preceding Paragraph, regardless of whether DTSC has notified CDE or
11 Glencoe of a violation.

12 **14.4. Accrual of Penalties.**

13 All penalties accruing under this Section shall be due and payable as
14 follows: the involved Performing Party shall pay stipulated penalties to DTSC
15 within thirty (30) days of that Performing Party's receipt from DTSC of a
16 demand for payment of the penalties, unless the Performing Party invokes the
17 Dispute Resolution procedures under Paragraph 9. All payments to DTSC under
18 this Paragraph shall be paid by certified or cashier's check made payable to
19 "Department of Toxic Substances Control," indicate the name of the case, that
20 the payment is for stipulated penalties, and the name and address of the party
21 making payment. Payments shall be sent to:

22 Department of Toxic Substances Control
23 Accounting/Cashier
24 1001 I Street, 21st Floor
25 P.O. Box 806
Sacramento, CA 95812-0806

26 **14.5. Obligations Not Altered.** The payment of penalties shall not
27 alter in any way the Performing Parties' obligations under this Consent Decree.
28

1 Penalties shall continue to accrue as provided in Paragraph 14.1 during any
2 dispute resolution period, but need not be paid until the following:

3 14.5.1. If the dispute is resolved by agreement or by a
4 decision of DTSC that is not appealed to this Court, accrued penalties
5 determined to be owing shall be paid to DTSC within fifteen (15) days of the
6 agreement or the receipt of DTSC's decision or order;

7 14.5.2. If the dispute is appealed to this Court and DTSC
8 prevails, the Performing Party that brought the dispute shall pay all accrued
9 penalties determined by the Court to be owed to DTSC within sixty (60) days of
10 receipt of the Court's decision or order, except as provided below;

11 14.5.3. If the District Court's decision is appealed by any
12 Party, the involved Performing Party shall pay all accrued penalties determined
13 by this Court to be owing to DTSC into an interest-bearing escrow account
14 within sixty (60) days of receipt of the Court's decision or order. Penalties shall
15 be paid into this account as they continue to accrue, at least every sixty (60)
16 days. Within fifteen (15) days of receipt of the final appellate court decision, the
17 escrow agent shall pay the balance of the account to DTSC or to CDE to the
18 extent that they prevail;

19 14.5.4. If the involved Performing Party fails to pay
20 stipulated penalties when due, DTSC may institute proceedings to collect the
21 penalties, as well as interest. The involved Performing Party shall pay interest
22 on the unpaid balance, which shall begin to accrue on the date of demand made
23 pursuant to Paragraph 14.3.

24 **14.6. Waiver of Penalties.**

25 Notwithstanding any other provision of this Section, DTSC may, in
26 its non-reviewable discretion, waive any portion of its respective stipulated
27 penalties that have accrued pursuant to this Consent Decree and nothing in this
28 Consent Decree precludes the Court in its order resolving a dispute under

1 Paragraph 9 from specifically relieving a Performing Party of the obligation to
2 pay stipulated penalties, or any portion thereof, assessed by DTSC and accruing
3 to DTSC, related to the dispute.

4 14.7. Dispute Resolution. Glencoe and CDE may dispute DTSC's
5 right to the stated amount of the penalties by invoking dispute resolution in
6 accordance with Paragraph 9 of this Consent Decree.

7 **15. FORCE MAJEURE**

8 The Performing Parties shall cause all Work to be performed within
9 the time limits set forth in this Consent Decree unless an extension is approved
10 or performance is delayed by events that constitute an event of force majeure.
11 For purposes of this Consent Decree, an event of force majeure is an event
12 arising from circumstances beyond the control of the involved Performing Party
13 that delays performance of any obligation under this Consent Decree, provided
14 that the involved Performing Party has undertaken all appropriate planning and
15 prevention measures to avoid any foreseeable circumstances. Increases in cost
16 of performing the Work specified in this Consent Decree shall not be considered
17 circumstances beyond the control of the involved Performing Party. For
18 purposes of this Consent Decree, events which constitute a force majeure shall
19 include, without limitation, events such as acts of God, war, civil commotion,
20 unusually severe weather, labor difficulties, shortages of labor, materials or
21 equipment, government moratorium, delays in obtaining necessary permits due
22 to action or inaction by third parties, earthquake, fire, flood or other casualty.
23 The involved Performing Party shall notify DTSC in writing immediately after
24 the occurrence of the force majeure event. Such notification shall describe the
25 anticipated length of the delay, the cause or causes of the delay, the measures
26 taken and to be taken by the involved Performing Party to minimize the delay
27 and the timetable by which these measures will be implemented. If DTSC does
28 not agree that the delay is attributable to a force majeure, then the matter may be

1 subject to the dispute resolution procedures set forth in Paragraph 9 of this
2 Consent Decree.

3 **16. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

4 This Consent Decree shall be lodged with the Court for a period of not
5 less than thirty (30) days for public notice and comment. DTSC reserves the
6 right to withdraw or withhold its consent if the comments regarding the Consent
7 Decree disclose facts or considerations which indicate that the Consent Decree
8 is inappropriate, improper, or inadequate. CDE and Glencoe consent to the
9 entry of this Consent Decree without further notice. If this Consent Decree is
10 not entered by the Court for any reason, the Parties agree that any activities of
11 CDE or Glencoe, approved by DTSC and conducted in compliance with the
12 provisions of this Consent Decree, shall be deemed to be consistent with the
13 NCP. If for any reason the Court should decline to approve this Consent Decree
14 in the form presented, this agreement is voidable at the sole discretion of any
15 Party and the terms of the agreement may not be used as evidence in any
16 litigation between the Parties.

17 **17. MODIFICATION**

18 Schedules specified in this Consent Decree for completion of Work may
19 be modified by agreement of DTSC and the Performing Parties. All such
20 modifications shall be made in writing.

21 **18. RETENTION OF JURISDICTION**

22 This Court retains jurisdiction over both the subject matter of this Consent
23 Decree and the Performing Parties for the duration of the performance of the
24 terms and provisions of this Consent Decree for the purpose of enabling any of
25 the Parties to apply to the Court at any time for such further order, direction, and
26 relief as may be necessary or appropriate for the construction or modification of
27 this Consent Decree, or to effectuate or enforce compliance with its terms, or to
28 resolve disputes in accordance with Paragraph 9 hereof.

1 **19. SIGNATORIES**

2 Each undersigned representative of DTSC, CDE and Glencoe
3 certifies that he or she is fully authorized to enter into the terms and conditions
4 of this Consent Decree and to execute and legally bind such Party to this Decree.

5 **20. COUNTERPARTS**

6 This Agreement has been executed simultaneously in several
7 counterparts, each of which shall be deemed an original, but all of which
8 together shall constitute one and the same instrument.

9 **21. FINAL JUDGMENT**

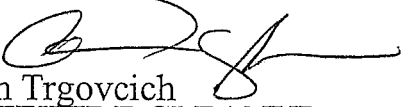
10 This Consent Decree and its exhibits constitute the final, complete,
11 and exclusive agreement and understanding among the parties with respect to
12 the settlement embodied in the Consent Decree. The parties acknowledge that
13 there are no representations, agreements or understandings relating to the
14 settlement other than those expressly contained in this Consent Decree. Upon
15 approval and entry of this Consent Decree by the Court, this Consent Decree
16 shall constitute a final judgment between and among DTSC, CDE and Glencoe.
17 The Court finds that there is no just reason for delay and therefore enters this
18 judgment as a final judgment under Rules 54 and 58 of the Federal Rules of
19 Civil Procedure.

20
21
22 SO ORDERED, this _____ day of _____, _____

23
24
25 _____
United States District Judge
26
27
28

The California Department of Toxic
Substance Control;

DATED: May 2, 2007

BY: 
Caren Trgovcich
STATEWIDE CLEANUP
OPERATIONS DIVISION CHIEF,
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

Cornell-Dubilier Electronics, Inc

DATED: _____

BY:

Its:

Glencoe Properties, LLC

DATED: _____

BY:

Its:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The California Department of Toxic
Substance Control;

DATED: _____

BY:
Caren Trgovcich
STATEWIDE CLEANUP
OPERATIONS DIVISION CHIEF,
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

Cornell-Dubilier Electronics, Inc

DATED: 5-2-07

BY: *James Keph*
Its: *President*

Glencoe Properties, LLC

DATED: _____

BY:
Its:

1 The California Department of Toxic
2 Substance Control;

3 DATED: _____

4 BY:
5 Caren Trgovcich
6 STATEWIDE CLEANUP
7 OPERATIONS DIVISION CHIEF,
8 DEPARTMENT OF TOXIC
9 SUBSTANCES CONTROL

10 Cornell-Dubilier Electronics, Inc

11 DATED: _____

12 BY:

13 Its:

14 Glencoe Properties, LLC

15 DATED: 5/2/07

16 BY: *David Boen*

17 Its: *Vice President*

1 **DECLARATION OF SERVICE BY OVERNIGHT MAIL**

2 **RE:** *State of California Department of Toxic Substances Control v. Cornell-*
3 *Dubilier Electornics, Inc.; and Glencoe Properties, LLC*
4 **Case No.: CV-049785VBF (MANx)**

5 I, **Aimee Lopez**, declare:

6 I am employed in the City of Los Angeles, County of Los Angeles, State of
7 California. I am over the age of 18 years and not a party to the within action. My
8 business address is 300 S. Spring Street, Suite 1702, Los Angeles, California
9 90013. On May 3, 2007, I served the documents named below on the parties in
10 this action as follows:

11 **DOCUMENT SERVED: CONSENT DECREE**

12 **SERVED UPON:**

13 **BY MAIL:** I caused each such envelope, with postage thereon fully
14 prepaid, to be placed in the United States mail at Los Angeles, California. I
15 am readily familiar with the practice of the Office of the Attorney General
16 for collection and processing of correspondence for mailing, said practice
17 being that in the ordinary course of business, mail is deposited in the United
18 States Postal Service the same day as it is placed for collection.

19 I hereby certify that I am employed in the office of a member of the Bar of
20 this Court at whose direction the service was made.

21 **XX BY OVERNIGHT MAIL:** I am readily familiar with the practice of the
22 Office of the Attorney General for collection and processing of
23 correspondence for overnight delivery and know that the document
24 described herein will be deposited in a box or other facility regularly
25 maintained by FedEx for overnight delivery.

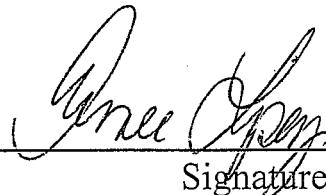
26 **SEE ATTACHED SERVICE LIST**

27 **BY FACSIMILE:** I caused to be transmitted the document described herein
28 via the following facsimile number:

29 I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct. Executed on May 3, 2007, at Los Angeles,
31 California.

32 Aimee Lopez

33 _____
34 Declarant

35 
36 _____
37 Signature

SERVICE LIST

*STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
CONTROL*

*v.
CORNELL-DUBILIER ELECTRONICS, INC.; and GLENCOE PROPERTIES,
LLC*

NO.: CV-049785VBF (MANx)

Laurie Burt, Esq.
Jonathan M. Ettinger, Esq.
Foley Hoag LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2800

Attorneys for Defendant
Cornell-Dubilier Electronics, Inc.

Peter H. Weiner
John P. Phillips
Paul, Hastings, Janofsky & Walker
LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105

Attorneys for Glencoe Properties, LLC

Daniel M. Rygorsky
Skadden, Arps, Slate, Meagher &
Flom LLP - Los Angeles
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90017

Attorneys for Defendant Cornell-
Dubilier Electronics, Inc.

Exhibits

The exhibits for this consent decree are voluminous and can be viewed at DTSC's Glendale office or you may order copies. Please contact Mr. Todd Wallbom at 818-551-2855 or twallbom@dtsc.ca.gov to make an appointment to view them or to obtain copies pursuant to the public notice.